

N.D.A.G. Letter to Nelson (April 26, 1985)

April 26, 1985

Ms. Carol S. Nelson
Assistant State's Attorney
Barnes County State's Attorney's
Office P.O. Box 209
Valley City, North Dakota 58072

Dear Ms. Nelson:

Thank you for your letter of April 9, 1985, as to the authority of a county to enact zoning regulations throughout the county including townships despite the fact that a township has not relinquished their right to zone within the township or where the townships have not adopted any zoning plan of their own.

Enclosed is a copy of an opinion written on April 1, 1963, which appears to answer this question. As this opinion states, N.D.C.C. 11-33-01 authorizes county commissioners to make zoning regulations within the county subject to the provisions of N.D.C.C. 11-33-20. This latter statute, with respect to townships, simply states that townships retain the authorization to enact zoning regulations within their boundaries unless they wish to relinquish that authority to the county. This statute does not state that zoning regulations of the county are of no effect within townships. All this provision states is that townships are not prevented from enacting their own zoning regulations should they so desire.

Therefore, a county is authorized to enact zoning regulations throughout all townships despite the fact that the townships have not relinquished that authority. However, townships retain the authority, unless relinquished, to enact their own zoning regulations should they so desire. As stated in the April 1, 1963, opinion, while the establishment of a township zoning commission would not invalidate all previous county zoning commission regulations, it would invalidate all inconsistent previous county zoning commission regulations.

Sincerely,

Nicholas J. Spaeth

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Enclosure